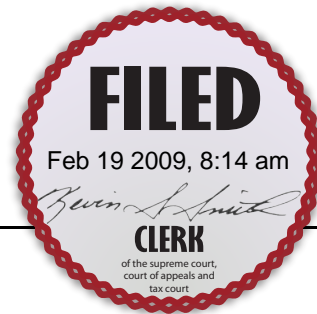


Pursuant to Ind.Appellate Rule 65(D),
this Memorandum Decision shall not be
regarded as precedent or cited before
any court except for the purpose of
establishing the defense of res judicata,
collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

FAY SCHWARTZ
Middlebury, Indiana



**IN THE
COURT OF APPEALS OF INDIANA**

LYNDA AWALD, BAIL AGENT,

Appellant,

vs.

STATE OF INDIANA,

Appellee.

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No. 20A03-0809-CR-446

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable James W. Rieckhoff, Judge
Cause No. 20D05-0701-FD-28

February 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Lynda Awald appeals from the trial court's denial of her motion to correct error following the court's judgment of forfeiture of bond. She presents a single issue for our review, namely, whether the trial court erred when it entered a judgment of forfeiture of bond against Awald.

We affirm.

FACTS AND PROCEDURAL HISTORY

On January 25, 2007, Donald Kinsman was charged with multiple crimes in Elkhart County. On February 1, Kinsman posted a \$6000 surety bond with Lexington National Insurance Corporation ("Lexington"), with Awald acting as bondsman. And on February 2, the trial court held the initial hearing on the charges against Kinsman. The trial court set the omnibus hearing for March 21, 2007, and Kinsman informed the trial court that he would retain counsel.

On March 9, 2007, Awald filed a letter requesting relief of surety on Kinsman's bond. That letter states:

Officer Ray, [Elkhart Police Department], called me on Feb. 1, 07 in the evening and reported that Donald Kinsman and his wife was [sic] selling everything inside their trailer and are getting ready to skip the state. I told him that I needed proper paperwork from the court to revoke the bond. Officer Ray had me talk to Donald on the phone and he was told by Officer Ray that he could take him in if I wished. I ended up telling Donald that he had to report to my office the next morning. He did not have a warrant and Officer Ray did not have a new arrest charge. Donald was warned and alerted that I would be on alert for him. Donald called me early Friday morning and told me that he could not come to Goshen to my office because the roads were too bad. My recovery agent and I went to his home in Popular Trailer Court and started asking the manager and neighbors' [sic] questions because Donald would not answer his phone. We sat there all day watching to see if anyone would come out. My recovery agent

decided to go home at 2:00. I continued to sit in my car and watch. At 3:00 Donald's wife called me and told me that they knew I was looking for Donald. She stated that Donald went to the store and would be back in 10 minutes. At that very moment Donald came out and walked down to my car and got in. I talked to him and he told me several conflicting stories and then got out and went back into his home. I immediately called for police back up. I parked at the entrance of the park and waited for police. Officer Garvey came and put him in his car and took him to EPD. I arrive down station [sic] to pick up my paperwork and I am stopped at the inside door and told by Detective Dewitt that they will be taking Donald right back home. He said that they don't have a right to hold him without a proper warrant. I told Detective Dewitt that I have the power to arrest because of him being under my bond and he was ready to leave the state. Detective Dewitt would not even allow me to talk to Elkhart County to come and transport him from the jail to Goshen. Officer Garvey stated that if I could get the County to come and meet him that they could have him. I was put on hold at the county and later denied transport. Since I was in the jurisdiction of Elkhart City, I thought it was of common courtesy to call them for back up. I felt that I was denied my constitution [sic] right under Indiana law. I have found out [sic] the next morning when we went back to Donald's residence that they left for Kansas City, Kansas to his mother's house as soon as Officer Garvey dropped him off back home on Friday afternoon.

[Lexington] and Lynda Awald, attorney in-fact are requesting relief of surety on Donald Kinsman's bond. I would also ask if you do not consider the release of surety that a warrant is issued for his arrest and I am asking for an order of listing him on the NCIC list.

As we are requesting timely answers from Your Honor I am very appreciative that you took the time to read my request and consider it.

Appellant's App. at 13. The trial court denied Awald's requested relief. And Awald did not appeal from that order.

On April 10, the trial court set a pretrial conference for April 25 and ordered Kinsman to appear. When Kinsman failed to appear at that pretrial conference, the trial court issued a bench warrant, set bond at \$10,000, and ordered Awald "to surrender the

defendant forthwith.” Id. at 6. When Awald failed to produce Kinsman within one year, the trial court entered judgment against Awald and Lexington as follows:¹

This cause was considered on the suggestion by the Clerk of the Court that neither the bail agent nor the surety complied timely with the Court’s order issued April 25, 2007 to surrender the defendant. Having reviewed the record, the Court finds that (1) the bail agent and the surety failed to comply with the terms of Indiana Code [Section] 27-10-2-12(b) within 365 days after notice of the surrender order was mailed by the Clerk, and (2) judgment should be entered against them pursuant to Indiana Code [Section] 27-10-2-12(d).

Accordingly, there is hereby forfeited an amount equal to Twenty percent (20%) of the face value of the bond posted for defendant, and the Clerk shall forthwith enter judgment against Lynda Awald and Lexington National Insurance Co., for \$1,200[].

Id. at 17. Awald filed a motion to correct error, which the trial court denied. This appeal ensued.

DISCUSSION AND DECISION

Awald contends that the forfeiture judgment should be “set aside” because it was not her fault that she was unable to apprehend Kinsman before he fled the jurisdiction. But Awald does not deny that she failed to comply with Indiana Code Section 27-10-2-12(b), which provides:

(b) [If a defendant does not appear as provided in the bond,] [t]he bail agent or surety must:

(1) produce the defendant; or

(2) prove within three hundred sixty-five (365) days:

(A) that the appearance of the defendant was prevented:

¹ The trial court initially entered judgment against Awald and another surety, Universal Fire & Casualty, but less than two weeks later the court entered an amended judgment against Awald and Lexington.

(i) by the defendant's illness or death;

(ii) because the defendant was at the scheduled time of appearance or currently is in the custody of the United States, a state, or a political subdivision of the United States or a state; or

(iii) because the required notice was not given; and

(B) the defendant's absence was not with the consent or connivance of the sureties.

And Indiana Code Section 27-10-2-12(d) provides:

(d) If the bail agent or surety does not comply with the terms of subsection (b) within three hundred sixty-five (365) days of the mailing of notice required by subsection (a)(2), the court shall declare forfeited an amount equal to twenty percent (20%) of the face value of the bond. The court shall immediately enter judgment on the forfeiture, without pleadings and without change of judge or change of venue, and assess against the bail agent or surety all actual costs resulting from the defendant's failure to appear. These costs include jury fees, witness fees, and any other documented costs incurred by the court.

While Awald wrote a letter² to the trial court explaining her thwarted efforts to apprehend Kinsman before Kinsman failed to appear in court, she did not timely contact the court in an effort to comply with Section 12(b) after Kinsman failed to appear at the April 25, 2007, hearing. The statute is clear that a bondsman is required to comply with Section 12(b) after a defendant fails to appear. On appeal, Awald has not demonstrated compliance with the statute.³

² With that letter, which Awald filed with the trial court before Kinsman failed to appear, Awald sought "relief of surety on [Kinsman's] bond." Appellant's App. at 13. But the trial court denied that request, and Awald did not appeal from that order.

³ On page 14 of her Appellant's Brief, Awald states that she "did not receive notice of the defendant's failure to appear." But Awald did not make that contention in her motion to correct error or otherwise make that contention to the trial court. As such, the issue is waived. See Lea v. Lea, 691 N.E.2d 1214, 1218 (Ind. 1998) ("An issue not raised at trial cannot be advanced for the first time on appeal.").

Awald also asserts that the judgment should be set aside because the trial court entered the judgment against the wrong bonding company and sent notice of the judgment to the wrong bonding company. She suggests that the trial court failed to comply with Indiana Code Section 27-10-2-12(a)(2) when it did not initially notify Lexington regarding the judgment.⁴ But Section 12(a)(2) governs the notice required regarding a defendant's failure to appear, not notice of judgment. As such, Awald's contention on this issue must also fail.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.

⁴ To the extent Awald is trying to argue that the trial court presumably sent notice of the defendant's failure to appear to the wrong bonding company because it sent notice of judgment to the wrong bonding company, Awald has not directed us to any evidence in the record to support that theory. The CCS lists Lexington as the bonding company. And while the CCS indicates that notice of judgment was erroneously sent to Universal Fire & Casualty in June 2008, there is no indication that notice of Kinsman's failure to appear in April 2007 was also sent to Universal Fire & Casualty.